



UNITED STATES PATENT AND TRADEMARK OFFICE

my

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,718	06/17/2002	Gunther Spatz	2168.GLE.PT	2833

7590

01/12/2004

Morriss Bateman
O'Bryant & Compagni
Suite 700
136 South Main Street
Salt Lake City, UT 84101

EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
----------	--------------

3727

71

DATE MAILED: 01/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,718

Applicant(s)

SPATZ, GUNTHER

Examiner

James N Smalley

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-50 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 22-50 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 June 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7 and 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 3727

DETAILED ACTION

Priority

1. Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.
2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the sealing cap comprising at least two bonded materials, as claimed in claim 50, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 22-24, 27-28 and 30-45 are rejected under 35 U.S.C. 102(e) as being anticipated by Sindermann et al. US 6,619,016.

Art Unit: 3727

Sindermann '016 discloses a method for capping containers, comprising the steps of a) sealing a container with a first cap part (2), b) spraying off any traces of liquid and/or foam remaining on the bottle mouth, and c) applying the main, or second, cap (4).

Regarding claim 24, some drying will inherently occur as the cap is exposed to ambient air. Thus, the ambient air serves as a, "drying tool."

The sealing cap (2), best seen in fig. 1, has a retaining web, which is not labeled, but is immediately adjacent the cap recess (5), and comprises the bent-down periphery interacting with the mouth region of the bottle. The cap recess (5) and form the latching means/protrusion, and explicitly serves to maintain a connection between the liner (2) and the cap (4).

Regarding claims 41-45, the liner (2) comprises substantially the same cross-sectional shape as that of the instant invention, and thus reads on the claimed invention.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 25-26 and 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sindermann et al. US 6,619,016.

Sindermann '016 does not disclose the material from which the cap and liner are formed.

Examiner cites Official Notice that it is extremely well known and within ordinary skill to form bottle caps and liners of metal or plastic. One having ordinary skill at the time the invention was made would find it obvious to form the closure elements of Sindermann '016 of metal or plastic, to meet desired design tolerances for cost and sealing effect.

Art Unit: 3727

8. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sindermann et al. US 6,619,016 in view of Hannon US 3,861,551.

Sindermann '016 does not disclose forming the cap with a shaping tool.

Hannon '551 discloses a method of capping a bottle comprising a metal cap formed by a shaping tool, in order to provide scores which serve to create a pilfer proof skirt.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form a metal cap applied to the bottle of Sindermann '016 using a shaping tool, so as to obtain the benefit of providing a pilfer proof skirt.

9. Claims 49-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sindermann '016 in view of Grabus, Jr. et al. US 2,387,439.

Sindermann '016 does not disclose the sealing cap comprising two materials, or being formed of two or more bonded materials.

Grabus '439 discloses a liner for a bottle cap, comprising a thermoplastic resin coating (19). Although not explicitly disclosed, the liner comprises a "sealing compound," thus reading on the claimed limitation.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the liner of Sindermann '016, adding a thermoplastic resin coating such as that taught by Grabus '439, so as to obtain the benefit of a sealing layer on the liner.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 6,351,924	US 3,291,332
US 5,884,788	US 3,057,501
US 5,788,101	US 2,581,647
US 4,290,535	US 2,020,776
US 3,564,805	US 1,276,343

Art Unit: 3727

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 306-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 308-5648, email CustomerService3700@uspto.gov .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 8-5:30, Alternate Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

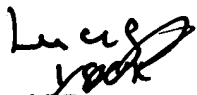
Art Unit: 3727

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line
Internet PTO-Home Page

1-800-786-9199
<http://www.uspto.gov/>

jns
December 31, 2003


LEE YOUNG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700